NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 11th September 2019

The House met at 9.30 a.m.

[The Deputy Speaker
(Hon. Moses Cheboi) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: Hon. Members, we do not seem to have the required quorum. I, therefore, order that the bell be rung for 10 minutes and the whips - I can see the Whip of the Minority Party - should take charge.

(Quorum Bell was rung)

Order, Hon. Members! We now have the required quorum. Therefore, business will begin.

PAPERS LAID

Hon. Deputy Speaker: On this particular Order, we have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House.

Report of the Auditor-General and financial statements in respect of the following institutions for the year ended 30th June 2018 and the certificates therein:

(i) National Social Security Fund.

(ii) Siala Technical Training Institute and,

(iii) Ekurubo Gietai Technical Training Institute.

Report of the Auditor-General and financial statements in respect of the following constituencies for the year ended 30th June 2018 and the certificates therein:

i. Suna East.
ii. Mathira.
iii. Borabu.
iv. Sotik.
v. Webuye East.
vi. Kanduyi.
vii. Keiyo South.
viii. Emgwen.
ix. Tarbach.
x. Eldas.
xi. Lagdera.
xii. Wajir West.
xiii. Ijara, and
xiv. Balambala.

Hon. Deputy Speaker: What is out of order, Hon. Gikaria?

Hon. David Gikaria (Nakuru Town East, JP): Hon. Deputy Speaker, I do not know whether this is the right time I should be raising this matter. Now that the Leader of the Majority Party has just laid reports on some constituencies on the NG-CDF, I do not know whether it is the right time. We are in the third month and the end of the first quarter and nothing has been said so far by the Chair of the CDF committee. The NG-CDF Act stipulates very clearly that the membership of the CDF Committee lapses after every two years. You remember in the 11th Parliament, we lost almost three months trying to get new members of the CDF committees, so that that the NG-CDF could start operating. I think it is time the Committee came up, first, on matters of allocation to every constituency and, second, on matters of where the board has reached in terms of replacement of the other CDF Committee members, if at all every constituency is going to have changes, so that we do not lose a lot of time during the transition. Most importantly, we are at the end of the first quarter and nothing has been said about this. It is high time the Chair of the CDF updated this House on matters of the CDF and where we have reached. It might be very tricky for us. I am not saying that we are in charge of the CDF, but at least we are in the process of collecting proposals. Other constituencies have already done that and yet we have not been given an update whatsoever.

Secondly, there are double standards within the NG-CDF. I am not sure whether I should do a petition. In my constituency, the public gave proposals on matters to do with this matter. When you want to build a school, they ask you for some letters from the ministry, which you give and then they ask for land documents. This is the case and yet other constituencies continue building schools on land for which they have not acquired titles. I think it is not fair for them to have double standards.

Hon. Deputy Speaker: I have given you a lot of time.

Hon. David Gikaria (Nakuru Town East, JP): I am sorry, Hon. Deputy Speaker. I want to thank you for that.

Hon. Deputy Speaker: It seems what you are raising is very popular with your colleagues and the issues are fairly genuine. The only thing, of course, is that you are raising it at the wrong time. I am trying to look around, and I do not see the Chairman of the CDF Committee. I think the best option would be for you to raise the matter in the afternoon and then the Chair will be informed in advance. I hope you are able to even talk to him, At least, the Members of the Committee who are in the House can talk to the Chair so that he can respond substantively. Otherwise, we would not like an ambush for a very crucial matter like this. It makes sense, but raise it in the afternoon.

What is it, Hon. Wandayi?

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Deputy Speaker, thank you very much. On a different note, I note that the Leader of the Majority Party has tabled a number of reports from the Office of the Auditor-General. It is also important to understand that that office fell vacant a number of weeks ago. I am raising this point because I have been away for some time and I need to understand if the Office of the Auditor-General is vacant. I am happy that the Leader of the Majority Party continues to table reports from that office, but it must be understood by this House that no report can be tabled on the Floor of this House from that office if the substantive holder of the office is not there. We run the risk of having no reports from that office being tabled here for purposes of our examination as the Public Accounts Committee (PAC) and the Public Investments Committee (PIC).

Therefore, my point of order is to inquire from the Leader of the Majority Party and perhaps, ask, through your direction, that he briefs the House on the progress that has been made in as far as filling the Office of the Auditor-General is concerned. I know there are timelines within the law.

Hon. Deputy Speaker: You know you rose on a point of order, which meant that there was something which you thought was out of order, but the way you are prosecuting your case is like you are requesting the Leader of the Majority Party. That means, therefore, in the first place, there was nothing out of order. You are trying to get a way of making sure that the Leader of the Majority Party responds to some issues, which makes sense. I am trying to look for what is out of order.

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Deputy Speaker, I am trying to do my best under the circumstances. I hope you will indulge me, so that the Leader of the Majority Party can advise the House on the steps that are being taken to have the Auditor-General recruited. This is a matter that needs to be expedited. In short, that is what I am trying to say even though we know that there are timelines and procedures within the law.

Thank you.

Hon. Deputy Speaker: It is good enough that the Leader of the Majority Party is in the House and he has heard you. What I am grappling with is whether it is actually the Leader of the Majority Party who is in charge of that process. But we can hear from him. I believe he must have something on it. Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, from the outset, let me put the record straight that the documents we are tabling are signed by the former Auditor-General and they were submitted to the House before he left - when we were on recess. Even today, I will still table more. All those documents are authentic and they have been signed by the former competent Auditor-General, Mr. Ouko.

Parliament, in legislating on that office, has failed, because we did not create a safeguard on what happens in case of a vacancy. From where I sit, even the Executive or whoever is in charge has failed because the vacancy in that office should have been advertised six months before the exit of the Auditor-General. As long as we delay, there is no audit report that will

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

come from that office. That is the position in law. I will agree with the Chair of the PAC and consult the Head of Public Service to know the progress, both for the Controller of Budget and the Auditor-General. They must be fast-tracked so that in the next one or two months, we can Have a substantive Controller of Budget and Auditor-General.

You know the only items before the Chair of the PAC are audited accounts from the Auditor-General. So, if there will be no Auditor-General in the next one month, this man has no job. He will be redundant. In fact, PIC is better. They have something to do but for him, every morning he has to look for a document signed by the Auditor-General. Sometimes it is good to be intelligent like Hon. Wandayi, so that when some people want to make you redundant, you have to raise the red flag. So, I will bring an answer.

Hon. Deputy Speaker: We have heard the Leader of the Majority Party. That is called succession planning. There should have been better succession planning. It is an act of good governance. Having heard that, we will go to the next Order, but before that, I will recognise, in the Speaker's Gallery, pupils and students from Sawa Excellent Education Centre, Kamukunji Constituency of Nairobi County.

Next Order.

ORDINARY QUESTIONS

The first Question, which would have been asked by Hon. Florence Mutua, is taken to another opportune time. So, let us go to the Member for Kimilili, Hon. Didmus Barasa Wekesa.

Question No. 383/2019

MEASURES TO ENHANCE DISASTER RISK REDUCTION

(Question deferred)

Question No.384/2019

NUMBER OF CANCER PATIENTS SEEKING TREATMENT ABROAD

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Deputy Speaker. I beg to ask the Cabinet Secretary for Health the following Question:

(i) How many patients have sought cancer treatment out of the country for the last five years?

(ii) What measures is the Ministry taking to ensure that cancer diagnosis and management is carried out at all levels of hospitals in the country?

I thank you, Hon. Deputy Speaker

Hon. Deputy Speaker: Thank you very much. That one will be replied to before the Departmental Committee on Health.

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

The next one would have been a Question by Hon. Beatrice Nkatha. She has written that she is absent on some duty and so that one also will be placed before the next sitting. Since also the Member for Gem has made a request, that one will also be skipped. That is the last one.

Question No.386/2019

STATUS OF THE ISSUANCE OF THE NEW CURRENCY NOTES

(Question deferred)

So, we are through with Questions.

Next Order.

BILL

Second Reading

THE INSTITUTE OF DIRECTORS OF KENYA BILL

(Hon. (Dr.) Chris Wamalwa on 31.07.2019 – Morning Sitting)

(Debate concluded on 31.7.2019)

Hon. Deputy Speaker: This one had been canvassed to the end. So, I proceed to put the Question.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

Next Order.

MOTION

CERVICAL CANCER SCREENING AND ISSUANCE OF HPV VACCINE TO BOYS AND GIRLS

THAT, aware that cervical cancer is the leading type of cancer in the country causing the greatest number of deaths with at least eight to ten women

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

succumbing every day to the disease; further aware that most women diagnosed with precancerous changes in the cervix are in their 20s and 30s, but the average age of women when they are diagnosed with cervical cancer is the mid-50s; considering that Human Papilloma Virus (HPV) is one of the most common viruses in the world with 4 out of 5 (80%) persons getting some type of HPV at least once in a lifetime; cognisant of the fact that men and women can get HPV typically with the immune system getting rid of HPV without needing treatment; deeply concerned that HPV is a major risk factor of cervical cancer with nearly 99.7 percent of cervical cancers being caused by infection from high-risk HPV; appreciating that cervical cancer could be totally eliminated and further averted by putting preventative measures through timely treatments, this House therefore resolves that the National Government rolls out free screening services to all women and issuance of the HPV vaccines to boys and girls to reduce the mortality rates and completely eradicate deaths caused by Cervical Cancer in the Country.

(Hon. (Dr.) Tecla Tum on 31.7.2019)

(Debate Concluded on 7.8.2019)

Hon. Deputy Speaker: That one had also been canvassed to the end and what remained was the Question to be put. Having confirmed that we still have the numbers, I proceed to put the Question.

(Question put and agreed to)

Next Order.

BILLS

First Reading

THE RADIOGRAPHERS BILL

(Orders for First Reading read - Read the First Time and ordered to be referred to the relevant Departmental Committee)

Second Reading

THE BANKING (AMENDMENT) BILL

Hon. Deputy Speaker: Is Hon. Jude Njomo in the House? Let us hear the Member for Kiambu.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Deputy Speaker. I beg to move that the Banking (Amendment) Bill be read a Second Time. The moving of this Bill has been necessitated by…

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Hon. Deputy Speaker: Hon. Jude, for the sake of clarity, are we doing the First or the Second Reading? This is because you are supposed to be moving. So, move it. You are doing well Hon. Njomo.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Deputy Speaker. I beg to move that the Banking (Amendment) Bill be read a Second Time.

Hon. Deputy Speaker, this has been necessitated by a ruling of the High Court of Kenya that was done a few months ago. This was as a result of a case that was presented to court by a Mr. Boniface Oduor and the respondents in this case were the Attorney General, the Kenya Bankers Association, the Central Bank of Kenya and the Parliament of Kenya. The courts found it necessary to invite the Kenya Consumer Federation to be part of the respondents to represent Kenyans.

Hon. Deputy Speaker, I would like to remind the Members that before this happened, in 2016, we had, as a House, debated the Banking Act (Amendment) Bill of 2016 and passed it. It was later assented to by the President. This was necessitated by the high interest rates that banks were charging. There was a lot of conversation between business people, Parliament and banks to try and come to a sensible rate of interest that banks were charging, but it never happened. So, it was found necessary to legislate on this so as to safeguard Kenyans from the high interest rates.

Hon. Deputy Speaker: Hon Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you Hon. Deputy Speaker, it is not anything that should disturb the Member. We are following him keenly. Is it in order that he becomes louder? We want to listen to him. Thank you.

Hon. Jude Njomo (Kiambu, JP): Maybe the microphone has a problem, but I have no problem with my voice. I can even address the House without the aid of the public address system.

Hon. Deputy Speaker: I am actually hearing you very well. I do not know whether it is because Hon. Milemba is not seeing you. Sometimes there is that instinct when you are not seeing the mouth of the Member running. However, let us see if you can use the next microphone.

Hon. Jude Njomo (Kiambu, JP): Thank you. The Hon. Member has to believe in what he is not seeing.

Hon. Deputy Speaker, it was necessary for this House to pass a law to protect *wananchi* from the excessive interest rates charged by banks. Therefore, this law was debated for a long time in this House, there was a lot of public support and it was passed. Immediately it was passed, a gentleman by the name Mr. Owuor went to court in 2016. This case has been going on since then until last year when a ruling was made. Many prayers were done concerning this particular case, but the court found a few points which they requested this House to work on.

The High Court ruled that Section 33B(1) and (2) of the Banking Act were unconstitutional for being vague, ambiguous, imprecise and indefinite. Fortunately, the declaration was suspended for 12 months. This House was given 12 months within which to debate and make corrections to the vague sections found by the court. If we are unable to correct this within the 12 months ending in March next year, automatically, this law will be suspended.

On Section 33B(3), the High Court declared that the penal provisions were unconstitutional and null and void for being discriminatory contrary to Articles 27 and 29 of the Constitution and an infringement of fair hearing under Article 50 of the Constitution. This means that the bank officials were going to be penalised if they charged excess of four per cent above the Central Bank of Kenya (CBK) rate, while the borrower was not going to be penalised. The Court found this to be unfair and discriminatory and therefore needs to be corrected.

I would like to refresh the memory of the Members on the provisions of Section 33B(1), (2) and (3).

33B. Powers of Central Bank to enforce interest ceilings

"(1) A bank or financial institution shall set the maximum interest rate chargeable for a credit facility in Kenya at no more than four per cent, the Central Bank Rate set and published by the Central Bank of Kenya.

(2) A person shall not enter into an agreement or arrangement to borrow or lend directly or indirectly at an interest rate in excess of the prescribed law.

(3) A bank or financial institution which contravenes the provisions of sub-section (2) commits an offence and shall, on conviction be, liable to a fine of not less than one million shillings, or in default the Chief Executive officer of the bank or financial institution shall be liable to imprisonment for a term of not less than one year."

One of the terms said to be ambiguous and vague is credit facility. In this law, the terms 'credit facility' and 'loan' are used interchangeably. The term 'credit facility' has not been defined in law, but the term 'loan' has been defined in law to mean 'loan includes any advanced credit facility, financial guarantee or any other liability incurred on behalf of any person'. The court wants us to define the term credit facility using proper language.

In this Bill, we have done that by removing the word 'credit facility' because the word 'loan' takes care of credit facility and this is better language. The other problem is the four per cent CBK rate set and published. The court found it unclear whether we are moving over, above or below. Also, the rate being set is not properly documented because there are several rates in CBK like the CBR, the Kenya Bankers Reference Rates (KBRR) and others. So, we are required to be very specific and precise to avoid ambiguity.

The interest of four per cent was also found not to be very precise because we did not state whether we were charging four per cent per day, month or annum. We are supposed to clear this. The next amendment begs to answer the question on what base rate is applicable. The court held that the words Central Bank rate set and published by Central Bank was imprecise, uncertain and fell short of what would be termed as a good piece of legislation that is easily understood by the common *mwananchi*. This is because this provision does not point out the exact base rate we are basing on and we have done this correction.

Another issue is whether the sanctions and penal provisions in the Statute are necessary for emphasising compliance. The court ruled that by only penalising the bank, we are being discriminatory. So, we were left with two alternatives, either to remove the penalties or penalise all the parties in the agreement. If we remove the penalties, then there will be no motivation for people to obey the law. The only option we are left with is to penalise both the borrower and lender if they enter into an agreement that goes outside this law. I have proposed to amend this provision in order to retain the existing penalty, but for it to apply to all offenders, hence removing the discriminatory aspect.

This is what necessitated this law and we have done the necessary corrections as required by law. But it is worth noting that this might not be the last war we will fight with banks. I can only describe what banks are doing today as State capture. If you are tech-savvy, you can search on Wikipedia where State capture is defined as the way formal procedures such as laws, social norms and Government bureaucracy are manipulated by private individuals and firms so as to

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

influence State policies and laws in their favour. State capture seeks to influence the formation of laws to protect and promote influential private interests.

The first law was proposed in this House by a former Member of Parliament, Hon. Joe Donde, passed and assented to by the former President Moi, but banks were able to use courts to get their way. In 2016, this House passed the same law and they went to court again to challenge its validity. I have done my own investigations to find who this Boniface Oduor, who took this House to court is. I was surprised to find out that this Boniface Oduor was a student of law who was doing pupillage at the firm of the advocate who was representing the CBK in the same case. What does that mean? It means that Boniface Oduor was going to court on behalf of the CBK. Maybe he was sent by his boss. Maybe that is the price he had to pay for being allowed to do pupillage in that particular firm. So, what are the banks doing? They have got control of the CBK and it is now doing what the banks want to be done. That is manipulation. It is what I am calling State capture. It is not the first time they have done that.

In the last year’s Finance Bill, there was hue and cry from *mwananchi* that there are so many assets and cash within banks belonging to deceased persons. We, therefore, passed a law requiring that every bank gets details of the next of kin of its customers. This was after realisation that banks and other financial institutions were holding more than Kshs235 billion both in cash and assets belonging to people who are unknown. We are talking about dead people who their next of kin do not know about the amount of money being held by the banks. So, we passed a law here that every bank should get details of the next of kin. Indeed, I got a letter from my bank, in my mailbox, requesting me to give the details of my next of kin, which I did. Little did I know that the same banks had gone to court to challenge that particular amendment because they do not want to keep a record of their customers’ next of kin. They would like to benefit from what you have banked. If the good Lord calls you and your relatives do not know you have money in the bank, the money ends up with the banks. So, banks are not willing to obey the law. They want to do everything to circumvent it.

The CBK also passed some regulations limiting the amount which you may bank without explaining. I think it was up to an amount of Kshs1 million. If you bank anything more than Kshs1 million, you have to go with your invoices, letters and everything to show where you got that money. I do not even think these regulations were brought to this House. This has really affected the way people are conducting businesses out there. I do not know who gave the CBK the powers to legislate and make rules that regulate banks.

The National Treasury and the CBK are supposed to be the regulators of banks. They are the ones who are supposed to give force to the rules that we make in this House regulating banks. However, we have seen the CBK and other officials of the CBK openly advocating against the rules that we have passed in this House. As a House, we should not be seen to be working with banks. We should not forget who sent us here. We are here to represent our people. Our people are being oppressed by banks. Banks have continued to make abnormal profits. From when we passed this law, banks have continued to grow both in terms of assets and their business. Last year, our banks posted very handsome profits.

The Kenya Commercial Bank (KCB) posted over Kshs22 billion as profit for last year’s trading. Equity Bank, if my eyes do not betray me, made a profit of Kshs16 billion, Co-operative Bank made a profit of over Kshs12 billion and Barclays Bank of Kenya made a profit of over Kshs7 billion.

So, banks are making their money, but they have continued to complain that the passing of this law has affected the way they are doing business, which is not correct. All of a sudden,

Disclaimer*: The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

banks have become the best advocates of *wananchi*. They are saying that *wananchi* are being affected. The banks promised us when we passed this law that they were going to cause a credit squeeze and they are not going to provide credit to our SMEs and the *wananchi*. That is exactly what they are doing. They are withholding credit from *mwananchi*, so that they affect our economy. When they affect our economy, they then arm twist our Government into changing this law so that they can go back to the field which they are used to and charge whatever interest rate they want. That will be the wrong direction to take. We should stand firm. We should let the banks know that this is a country that is regulated by laws. They should obey the law. Why should the interest rate in Kenya be at 18, 20 or 28 per cent and in other countries it is as low as 3 per cent? Where did we go wrong? Why should we be charged such high interest rates? When you are borrowing money and you are charged, say, 28 per cent, when will you ever make money as a business person? I understand most businesses make about 30 per cent as their profit. So, if you are paying between 20 per cent and 28 per cent to the bank as interest, then you have no business. We have been working for banks! Business people have been working for banks and that is why everybody is complaining that there is no money in the economy. People are not making profit. All the little profit they make goes to banks.

So, as we move on, we should always remember that we are doing this for our country. We want to enable our people to conduct their businesses in a profitable manner. Another reaction from the banks after this law was passed is that new mobile applications have been mushrooming. They are now giving loans to our people at between 5 per cent and 10 per cent per month amounting to almost 100 per cent. We have read here that this law is about any bank or financial institution. If you go to the same Act, a financial institution has been defined as any institution that takes money from *wananchi* either for keeping or for enterprising to make interest or to pay interest. These microfinance institutions are financial institutions, but the CBK has been unwilling to regulate them. If we could regulate the microfinance institutions and even the co-operative movement, then our interest rates would remain as low as required.

The mushrooming mobile applications are charging excessive interest rates. I think time has come for this House to think of how to regulate those mobile applications. They are messing up the lives of our youth because students in high schools and universities who have access to mobile phones are borrowing the money and are unable to repay. Their names are taken to the Credit Reference Bureau (CRB). After graduation - when they are looking for employment - they are asked for a certificate from the CRB, which they cannot get because they owe mobile applications some money. We need to work on the mobile phone borrowing so that we can save our people.

With those few remarks, I wish to move this Bill. I would like to request the Leader of the Minority Party to second it.

Hon. Deputy Speaker: Just to clarify some things, when you ask somebody to second, you do not use their office. Hon. Mbadi would be seconding in his capacity as the Member for Suba. That is the better way.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Deputy Speaker. I stand corrected. I would like to invite Hon. John Mbadi, the Member for Suba, to second.

Hon. John Mbadi (Suba South, ODM): Suba South! Thank you, Hon. Deputy Speaker. This is Hon. John Mbadi.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Which Suba?

Hon. Deputy Speaker: Order, Hon. Millie Odhiambo. The Suba which Hon. Mbadi represents is that one which you do not.

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Hon. John Mbadi (Suba South, ODM): Actually, Hon. Deputy Speaker, Hon. Millie should be reminded that I am the Member for Parliament for the original Suba. She is the Member for a delegated Suba.

Hon. Deputy Speaker: What is your point of order, Hon. Akoth?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Deputy Speaker, is Hon. Mbadi in order to mislead this House? The population of his Suba is smaller than ours. They are not the original one. They are our sisters, but because we were given a wrong name which they stole, they became Suba South. We are the North. They are not original. We are both Subas.

Hon. Deputy Speaker: Hon. Millie, there are two things. First, I have no issues. I do not want to get into your local politics. Most importantly, you should pronounce the name "Mbadi" in English not in Suba. You pronounced it in a manner that we could not follow.

Proceed, the Leader of the Minority Party, Hon. Mbadi. You can as well ignore that. We do not want to know the population. The results of the population census will come out in three months. We do not want to get into it now.

Hon. John Mbadi (Suba South, JP): Actually, Hon. Millie represented a constituency called Mbita up to just the other day. At that time, I was representing a constituency called Suba. We decided to divide the name and give them Suba North and retain Suba South. I am properly the Member for the original Suba.

That notwithstanding, I rise to do a very noble duty of seconding the Motion as moved by Hon. Jude Njomo regarding the amendments to the Banking Act. The main reason why we move Motions and second them is to bring clarity, just like Hon. Jude Njomo has tried to do, and explain because banking issues are technical for Members to understand and appreciate so that when they contribute to this Bill, they do so from a clear point of information. There has been a lot of misrepresentation and misinformation about what this Bill seeks to do. We need to clarify that so that Members understand what exactly this House is about to do.

The issue of controlling bank interest rates has had a long history in this country. It started way back and came as a result of the outcry by the public. Kenyans were complaining about the high interest rates that banks were charging. This was not for a wrong reason. Banks in this country converted themselves into what one would call a cartel. Ordinarily, as a professional in financial matters, I would not support regulation or legislation to curb interest rates. Banks decided to go rogue and, therefore, it required the intervention of the people's representatives. One would ask: How come Chinese contractors find it very easy to do business in this country? The reason is simple. Chinese contractors borrow loans at interest rates of 2 per cent and 3 per cent. Our contractors cannot go to our banks and access loans at below 14 per cent. This brings inequity in terms of competition. I call our banks for what they are - economic saboteurs. They are sabotaging the economic progress and development of this country. Therefore, it was necessary for this House to come out strong and intervene in a distorted financial market.

I will contribute to this when we come to the Finance Bill, but the National Treasury is not helping this country. Instead of curtailing their appetite for borrowing, the National Treasury has replaced and substituted the ordinary Kenyans who are supposed to borrow from the banks. The Treasury is the one borrowing. That, therefore, means that ordinary Kenyans cannot access loans at affordable rates which was the aim and intention of the amendment that Hon. Jude Njomo brought in 2016.

Having said that, what are we dealing with today? As Hon. Jude Njomo put it, immediately this Bill was passed into law and assented to, an individual Kenyan - and he has his right - called Boniface Oduor, went to court. Who did this gentleman sue? Whereas it is

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Parliament that passed this law, it was not sued. Instead, Oduor sued the CBK and the Attorney-General as respondents. In fact, the Kenya Bankers Association, the Consumers Federation of Kenya (COFEK) and the National Assembly decided to go to court as interested parties. The defence given by the CBK supported the Petition yet they were the respondent in court. The Attorney-General put up a poor show in court. Therefore, it is clear and evident that the person who went to court is not Boniface Oduor, but the CBK. Why would an institution created by law go to court disguising itself as an individual to challenge an Act of Parliament? I would call this for what it is, namely, a public deceit and an attempt to defeat justice. We need to tell the CBK that we came up with this law because of its failure to regulate the financial sector. If the CBK was effective and efficient in regulating the financial sector, there would be no need for this law.

This is where I want Members to pay attention and be keen because this has been misreported. The misreporting was that the courts annulled or said that this law is unconstitutional and, therefore, we are likely to go back to the former unregulated interest rate regime. That is not true. I thank the Judiciary for rejecting and refusing to accept the argument by the petitioner to annul this law to take us back to where we came from. In fact, the only thing that the courts did was to ask Parliament to clarify some ambiguities in this legal provision, which I agree to entirely as I will shortly explain. The Judiciary, therefore, asked us to amend mostly Section 33B of the Act. The following is what the court pronounced itself to and what Hon. Jude Njomo wants corrected.

Section 33 B of the Act states that a bank or a financial institution shall set the maximum interest rate chargeable for a credit. That is where the issue is. The courts found ambiguity in our asking that there should be a maximum interest rate without defining the period. The courts have asked us to define the period and we are saying that it should be an annual maximum interest rate. If you just leave it open, some mischievous characters may decide to charge the 4 per cent interest rate daily, hourly or yearly. Now we will be very clear in this law and that is what Hon. Jude Njomo is trying to do. A bank or a financial institution shall set the maximum annual interest rate charges. We are adding the word “annual” so that we do not leave it ambiguous.

The other words that are being changed are from ‘credit facility’ to ‘loan’. The Act contains the word ‘loan’ consistently in its usage. The amendment that Hon. Jude Njomo had initially introduced, which is now in the law, is the phrase ‘credit facility’. Firstly, the phrase ‘credit facility’ was found to be ambiguous and, therefore, the court asked us to clarify it. We are now bringing clarity by reverting to the word ‘loan’, so that it is consistent with the Act.

Hon. Deputy Speaker, the other thing that is coming out clearly, which Hon. Jude Njomo has added, but it was not asked for by the court, is to clearly define the CBK rates. Hon. Jude Njomo, in his amendment, is saying that we are talking about the rate that is mentioned under Section 36(4) of the CBK Act. It talks about the base lending rate so that there is no ambiguity. If you read Section 33B(2) of the Bill, even shylocks who loan people money at 30 per cent rate should worry because they are not left out in this definition.

Section 33B(2) says that a person shall not enter into an agreement or arrangement to borrow or lend directly or indirectly at an interest rate in excess of that prescribed by law. That does not leave out shylocks. They cannot lend beyond what is prescribed in law. Therefore, the base lending rate which is prescribed under Section 36(4) of the CBK Act is what we are referring to. We are saying that no financial institution or anybody should charge above 4 per cent of the base lending rate. That is the clarity that this Bill seeks to bring out.

Something else that also needs to be clarified here, and which the courts had asked us to do, is to be clear on the penalty. The original law says that a bank or a financial institution which

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

contravenes the provisions of sub-section 2 commits an offence and shall on conviction be liable to a fine of not less than Kshs1 million or in default, the Chief Executive Officer (CEO) of the bank or the financial institution shall be liable to imprisonment for a term not less than one year. I want to agree with the court that this is ambiguous because it is saying that it is the bank or the financial institution that shall be liable to a fine. If that fine is not paid, then the CEO should be imprisoned for a term not less than one year.

This means that if the financial institution or the bank is ready to pay Kshs1 million, the bank can just go ahead and charge more than 4 per cent interest rate and pay Kshs1 million. What is Kshs1 million to a bank or financial institution, and you are saying that the CEO would only be held responsible if that amount is not paid? So, you are basically not holding the CEO responsible. The amendment that Hon. Jude Njomo is bringing says that any person, not a bank or financial institution, who contravenes the provisions of sub-section 2 commits an offence and shall on conviction be liable to a fine of not less than Kshs1 million or to imprisonment for a term not less than one year. This now makes it very clear that if you are a CEO of a bank or financial institution and you preside over your institution, when you violate or contravene this law, you shall be personally held liable, fined and jailed or imprisoned as an individual. This makes it very clear.

This is a very small Bill. The amendments are few and condensed. My job was just to try to make it clear so that Members can understand it. I have shared with a few Members and some of them thought that we are removing the 4 per cent interest rate capping. That is far from it. Hon. Jude Njomo seeks to bring clarity as was directed by the court so that come March 2020 when the deadline that the court gave us shall lapse, we shall not only be in conformity with the court order, but we shall also have clarified and made the law more user friendly.

My final remarks go to the banking sector. If they want cooperation from this House, let them demonstrate through action that they are concerned about their customers and the plight of Kenyans. Look at this *Fuliza* that I hear people borrow money through. It is basically the poor who borrow money through *Fuliza*. It is managed by a major financial institution whose shareholders are wealthy Kenyans. This is one way of expanding and enlarging the gap between the poor and the rich because you are taking money from the poor at very exorbitant interest rates and giving it to the rich to share as dividends. It is criminal, unethical and it should stop. *Fuliza* is managed by financial institutions. Why is it that they charge higher rates than what is prescribed in law? We want to ask the CBK why it allows these financial institutions to charge higher rates for products which they create outside the normal banking process. That is also covered in this law and there is no excuse. The CBK needs to rein in on these people.

Thank you, Hon. Deputy Speaker, I second.

Hon. Deputy Speaker: Before I propose the Question, let me recognise, in the Public Gallery, pupils from Chrisco Educational Centre from Kibra Constituency, Nairobi County and girls from Lynpets Ambassadors School from Dagoretti South, Nairobi County.

(Applause)

(Question proposed)

I see top on the list is Hon. Maanzo Gitonga.

Hon. Daniel Maanzo (Makueni, WDM-K): I thank you, Hon. Deputy Speaker, for giving me an opportunity to support this very important Bill. As an advocate of the High Court

Disclaimer*: The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

of Kenya, I had an opportunity to look at the judgement and the parties who went to court and the general discussion which took place there. Mr. Boniface Oduor was a pupil at the law firm of the lawyers of the CBK. Although the Attorney-General was sued, he was absent in court on the day the judgement was given. Although this judgement was brought in bad faith, I really want to encourage Hon. Jude Njomo that we will make a better law.

When the first amendments came to this House, they were thoroughly criticised. The banks assumed that since this Bill would finally be assented to by the Head of State, His Excellency Uhuru Kenyatta, who is a serious businessman in this country with interest in banking, he would not assent to it. They were surprised when the President acted in the best interest of the majority of Kenyans. As soon as he signed the Bill into law, it was fought immediately. The petitioner was trying to come up with reasons why the petition should be admitted. He went on to say that there was a wide debate on this matter, and that it had elicited a lot of public interest. That is why finally the judge denied this young man costs in this matter and each party was advised to bear its own costs of this petition. If you look at it generally, you find that there was likelihood that if this petition went through at this date and these amendments were brought afresh, they would be defeated on the Floor of this House or suddenly the President would refer them back to the House, which complicates the matter.

I believe the President of the Republic of Kenya will again act in the best interest of Kenyans. I also believe that this House will this time round support this Bill in a big way. We represent Kenyans in this House and I believe, as a House, we act in the best interest of the common Kenyan who is not likely to grow economically by investing in businesses unless they take a loan. When retired President Mwai Kibaki became the Head of State in 2003, he encouraged commerce in the country and put in place a good atmosphere for people to borrow. Many Kenyan borrowed money from banks despite the high rates and grew the economy. There is a reason why interest rates should be capped so that Kenyans are not exploited by banks and there is a balance and inclusivity in the financial sector so that as many Kenyans as possible can grow their businesses. When that happens, even the banks will do better. So, the banks should encourage many people to borrow. When they charge high interest rates, they discourage many people from borrowing. Reasonable interest rates will ensure banks have more customers borrowing. As a practitioner in this field, I can assure the House that after the capping of interest rates, many Kenyans went to borrow money. But the banks were not making much money. Therefore, that is probably what has made it possible for someone to go to court and petition.

Courts, in one way or another make laws. That is why the constitutional court has guided us to relook at this matter again on the Floor of the House. It has even given 12 months for it to be considered, meaning that the law we passed is still in place until the expiry of the 12 months. Therefore, the House must move with speed and pass the law so that it goes through all the processes and within a year, we would have replaced the older law.

(An Hon. Member exited the Chamber)

Hon. Deputy Speaker: Who is that Member exiting?

Hon. Daniel Maanzo (Makueni, WDM-K): This is to have a better law in the country to manage the financial status of Kenyans better and improve on savings.

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

One other practice that Kenyans should adopt to check the banking industry is to invest more in credit unions, Saccos or saving through co-operatives. Other countries have increased the capacity of co-operatives. For example, some of the best performing Saccos are Harambee Sacco and Mwalimu Sacco and many others which save with banks. We should come up with amendments to the Co-operatives Law. That is because the law we are operating on is historical and was not well amended to rhyme with the new Constitution. We have many Saccos - including our Parliament Sacco – in which we save. They operate like banks. Saccos' interest rates are much lower than those of banks. If Kenyans do that, it will be the solution to this problem. Should this law not go through this time by not getting presidential assent the solution would be to invest in Saccos and convert our Sacco into a bank office and operate it as a bank. That will create competition in the banking industry and Kenyans will increase their savings. It will still serve the same purpose of enhancing Kenyans financially and making sure that we borrow and grow businesses. Only the rich flourished under the earlier law before we amended it. When the law was amended successfully, many Kenyans were able to access credit or loans and were able to grow businesses.

(Loud consultations)

Hon. Deputy Speaker: Order Members! Listen to the Hon. Member in peace and quiet. Who are those two Members consulting loudly? Consult in lower tones.

Proceed.

Hon. Daniel Maanzo (Makueni, WDM-K)**:** Thank you, Hon. Deputy Speaker. We must encourage good financial practices in the country by following the Constitution to make sure that no Kenyan is exploited by institutions like banks. By doing that, all Kenyan have a medium on which to grow economically and encourage as many Kenyans as possible to grow wealth to eradicate poverty and have better lives.

When you look at the amendments and the clarity with which the court sought to have the amendments, you will realise that it is an opportunity to make the law even better. It is now a blessing in disguise. Hon. Jude Njomo should not tire in his efforts to fight for Kenyans. We should all support him in the House to make sure that this good law that is for Kenyans succeeds and Kenyans borrow money by having a law which can serve them. The law is made for prosperity. It is made in such a way that all people in the country can be safeguarded and use it for prosperity. Kenyans should not tire and, at the same time, we should encourage a saving culture in the country through the co-operative movement and through the banks so that for those who ascribe to banks, they can use that channel. That necessitates the need to have a proper law which protects the common *mwananchi* who is commonly known as Wanjiku or Mwikali.

I support Hon. Jude Njomo and encourage as many Members as possible to support this amendment Bill. Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Let us have Hon. Tong'i Nyagaka.

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you Hon. Deputy Speaker for giving me the opportunity to speak to this Bill which touches on the lives of Kenyans. We are here in Parliament to protect their lives. Essentially, without people, we have no country. We whine every day saying that the economy is not doing as well as it should and we know the contributions banks have to make towards economic growth. Therefore, when we are concerned about the bank charges, it is a legitimate concern which should worry every one of us. How we approach it is the big question or the elephant in the room.

[The Deputy Speaker (Hon. Moses Cheboi) left the Chair]

[The Temporary Deputy Speaker (Hon. Christopher Omulele) took the Chair]

The questions we need to ask ourselves are: Are we going to punish people for their success? Are we going to punish banks because they are making money? Would we rather have a situation where they are not making money and then we punish them? We also have in the same economy, with the same parameters, struggling banks. We have a merger in progress between the National Bank of Kenya (NBK) and Kenya Commercial Bank (KCB). The reason for the merger is that NBK is not doing well. So, it is not fair to say that banks are making a lot of money and should be punished so that they can accommodate Kenyans. We also need to appreciate that in the same economy, some banks are struggling. Only those which are managed prudently like KCB, Co-operative Bank of Kenya, Barclays and Equity, just to mention a few, are making profits. They are not making profits because Kenyans are being over-charged, but they are making profits because they are well managed with qualified management and very competent board of directors. So, the question we need to ask ourselves is: Is it just enough to lower or raise interest rates? We cannot do that in isolation of Kenyan's behaviour.

Institutions operate under an economy with the behaviour of the people. We have history that has guided the country this far. As a former banker, I know that before a customer is admitted in a bank, "Know Your Customer" is applied. We do it to understand and appreciate our customers. We appreciate them all with their predicaments and we also understand that we cannot all be the same. Again, it is good to encourage our people to know that when they borrow money from a bank, the money is meant to make their lives better or grow their business. But we have a culture in Kenya where people borrow money from a bank to buy a suit, clothes or enjoy themselves by throwing parties for friends.

Certainly, that is going to affect how we handle our finances. We need to appreciate that banks have done their bit and capping the interest rates alone is not a panacea. It is not going to solve our concerns or everything that we are talking about. If we must cap the interest rates, it is only fair that we consider the lower interest rates. If the lower interest rates are controlled, we can control the upper limit. However, we cannot control both the upper and the lower limits because by doing so, we are not leaving the banks room to play around with their numbers. When you tell them that they must charge a certain interest rate on deposits and yet at the upper

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

limit you have sealed the cap, then most banks will have difficulties in operating under the same circumstances. If you have to do…

(Technical hitch)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Tong'i, you seem to have disappeared.

Hon. Richard Tong'i (Nyaribari Chache, JP): Yes, they disconnected me. Apparently, people who do not like banks making a lot of money are behind this hitch.

The Temporary Deputy Speaker (Hon. Christopher Omulele): I think you are saying very interesting things but you are not clearly audible. I will suggest that you come to the front here. You still have six minutes.

(Hon. Richard Tong'i moved to the Dispatch Box)

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Speaker, for being mindful of your brother. I appreciate that. As I was saying, controlling the interest rates alone is not going to solve the concerns that Kenyans have about the banks. We appreciate that even with the controlled interest rates, some banks are making profits and others are struggling. In this economy, as I had earlier said, we have banks which have made good profits and which have not made profits. They are actually at the verge of winding up.

I mentioned the NBK which has been struggling despite the massive Government investment in it. So, it is not just enough to say that banks are making profits. Rather, it is also good to appreciate the leadership and the management of the banks which have made profits. A bank like KCB under the leadership of Oigara, Co-operative Bank under the leadership of Muriuki and Equity are managing their money and their practices prudently.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Chris Wamalwa, what is out of order?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Hon. Temporary Deputy Speaker, in terms of relevance, we are debating the amendments pertaining to ambiguity. We are not talking about profitability based on the capping of interest rates. Is the Member in order to talk about irrelevant matters in this case?

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Tong'i is relevant. Proceed, Hon. Tong'i.

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Speaker, for informing *Daktari* because we have to lay a preamble and it all addresses and speaks to the same thing.

Disclaimer*: The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

We have microfinance institutions. If we have to address the interest rates and the ambiguity therein, then it should apply across board. We have the mobile money facility which has destroyed Kenyan youth. I have cases of some youth I was trying to help secure some employment somewhere. They were denied employment opportunity because they are already listed as not being credit worthy. All this is because of the money being availed at their disposal without any KYC. KYC enables the creditor to appreciate the quality of the person being given the loan. The mobile money is given almost freely to the customer without any procedure, and our youth are not educated enough in terms of exposure to appreciate that a loan is not money to entertain friends, or to reward yourself for lack of a better word. They need to appreciate that it is money meant to make their lives better in terms of growing business. Until such a time we prepare our people to appreciate that a loan is a cost to them and an asset to the bank, we should discourage the practice. Therefore, whenever you borrow money, you must use it in a way that is going to create income or employment for you. It should create more money for you so that you have something for yourself and something to give out to where you have borrowed.

With regard to M-PESA, if you compute the money they are charging even for the transaction, it is abnormal. If you analyse the money they are charging when you do a transaction… For example, sending Kshs5,000 to somebody will incur you a charge of above Kshs100. That is abnormal! That is a lot of money compared to what the banks are charging. It is abnormal and it is unacceptable.

As I wind up - and I can see the warning is up - countries which have succeeded in matters finances have had to come up with construction banks. Look at China. Its Government has come up with a construction bank which mainly targets foreign works. Therefore, they are creating employment because of the interest rates they charge. This is not for everybody; it is meant for a given segment of a market. Maybe, it is time Kenya came up with that kind of a policy where a fund is created and controlled targeting, maybe, a given section of the market. If it is construction, we come up with that kind of policy so that our contractors are able to compete with the Chinese and foreigners in the country. At the moment, a Kenyan contractor is meant to borrow money from the market at an interest rate of about 14 per cent whereas a competitor from China is going to borrow money at an interest rate of about 1 per cent. Therefore, the undercutting in the construction industry is real. The contractors from abroad are able to compete at a higher rate than us because of the kind of rates they are getting from their market. That is another way to look at the concern of interest rates.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Tong'i, your time is up.

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Speaker. I support the Bill but with a caveat that we remove the lower interest rate capping as we control the upper rate so that we give banks a chance to be able to manipulate and work with their numbers.

Thank you.

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very good contribution, Hon. Tong'i. We shall now have Hon. Muli Fabian, the Member for Kangundo.

Hon. Fabian Mulu (Kangundo, Muungano): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to join my colleagues in deliberating the amendment Bill by Hon. Jude Njomo.

First, I appreciate the fact that Hon. Jude thought about the issues of banking especially with regard to protecting Kenyans. Now, Kenyans do not borrow because they plan to borrow. They borrow because of economic pressure and despair caused by economic factors like lack of capital to start business, lack of enough resources to build a house and lack of fiscal planning.

Because of those factors, our people find themselves cornered by banking institutions, shylocks and also the phenomenon of mobile borrowing. The allure to borrow money is brought about by hard times and there is thinking that when you borrow money, you will be economically stable. Some people who are unable to repay the loans are bound to commit suicide. I am saying that this Bill has come at a time when almost 90 per cent of our Kenyan youth are under threat by the CRB. It is all because of mobile borrowing. It is a crisis if we do not come up with a system to control the issue of borrowing and give a proper system and operating factors on how to borrow money and how the lender is supposed to bring the invitation to treat. I say there must be invitation to treat because many consumers have been lured, especially in the banking industry, by very lengthy English. It is English with terms that one cannot understand. Our people end up being invited to engage in contracts that they do not understand. The Bill that Hon. Jude Njomo has come up with gives standard operations of the 4 per cent as the capping rate and banks can make profit.

Many countries have grown from Third World to Second World. Western countries are talking about being in the Second World. They did not get the Second World status because they had capital somewhere. They got there through loans. Many individuals and commercial entities have grown because of loans. So, loans are good. Before our people take loans, we have to make a good environment for people to borrow. I am saying this due to cases of shylocks. There are some cases where our people are given money by shylocks at an interest rate of 60 per cent a month. Earlier, micro finance systems would come up with their terms of repayment in three months 19 per cent and yet the money for the loan was from the CBK. The money they gave was not theirs. They gave money they had been given by the CBK. So, this is the best thing; to come up with this Bill.

We are not saying that the banking industry cannot give loans using the 4 per cent interest rate. The 4 per cent, if you do all the valuation to make sure your customer can pay back the money, will give proper returns. But because of fishy operations in the industry, people want to make money tomorrow. They want to misuse our customers. We cannot let this to go on in this Bill. There was the fusion of the law and a precedent was set. Some people create propaganda in the media to say that this Bill was thrown out, but despite the fusion of the law, there is nowhere in the world where we can let our people to get money without laws. We must have proper laws for our people to get money, especially through the capping of interest rates and by defining what a credit is and the security of such loans.

Kenya is in the third world. We are in an economically growing country. We forget that if we want this country to progress into the Second World, the pockets of our citizens should also

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

grow to the level of the Second World. If we let institutions exploit our people through loans, our people will end up being victims of auctioneers. Our people will be backward and yet, we will be saying that the economy is growing. That is why I say we have to support this Bill. It needs to be implemented immediately.

This House has passed very important Bills which are not operationalised. It is true that some people in the Executive will feel that an interest rate capped at 4 per cent is not fair. But I am telling the Executive that the law we make in this House is not for the present Members or the people in the Executive. That is because some day they will not be there. They will not be in that office one day. One day, these Members will not be in this House. So, I ask Members to support this Bill. I support it 100 per cent. I also request the banking industry to know that it is operating for the benefit of Kenyans. They should also see the importance of this Bill. If they find any part that is challenging, this House is ready to receive any proposal from them. But it is high time we supported this Bill.

Thank you. I support this Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Temporary Deputy Speaker, for allowing me to contribute to the Banking (Amendment) Bill.

At the outset, I want to support the amendments by Hon. Jude Njomo, more so, based on the ruling from the court. Therefore, this amendment seeks to make clarifications.

Having listened to the presentation by Hon. Jude Njomo and considering the person who went to court to sue the CBK and the Attorney-General on the Banking Act that had been done by this Parliament and assented to by the Head of State, clearly shows a collusion… Undergoing pupilage at that firm that was representing the CBK, that person had very clear instructions. It seems it is collusion between the CBK and the Office of the Attorney General, and this does not augur well. We have had cases of out of court settlements that have been done by the previous Attorney-General. Some of them have not been very favourable to the public. They have actually been scandalous or cantankerous in the sense that they fleece the public of the trust that the high Office of the Attorney-General has been bestowed. The Office of the Attorney-General of the Republic of Kenya not even making a serious presentation to challenge the case that was being brought shows that this was typically collusion. It is a shame that such an office of high esteem that is held by the Republic can engage itself in this kind of collusion. I find it very sad.

If you look at the issues that are being canvassed by Hon. Jude Njomo, you will find that they are very clear. Moving forward, I think this is something that needs to be supported. Technology is also moving. As time goes by, there is change of technology. You now have Apps on phones. Many of the youths are falling into the trap of borrowing where they are not able to get money. You occasionally go home and a youth is telling you: “I have a loan in a certain App. Hon. Member, please assist me to repay it.” It is very sad because those are the youths we are taking to colleges and expecting that they will get jobs and sustain themselves. Now, they will not even be able to get jobs because the CRB will indicate that they are not able to repay loans. It is also an embarrassment when they start coming to Members to ask for money to repay the very expensive loans they took through the Apps that are even above the interest rates that has been capped.

You have realised that even many of the business people working out there also take loans. They get bank overdrafts. What that means is that whatever business they are engaged in is for the banks. I think it is high time those who are in the banking sector realise that they are not there forever. They also have livelihoods to sustain. They must also look at comparisons

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

within the region and international standards so that they bring down the interest rates so that they do not have the Government as the only borrower.

What is happening is that, as we bring down the interest rates, it is only Government institutions that are borrowing large amounts of money because the risks are low in Government. Therefore, banks will be more comfortable doing business with the Government, lending money to parastatals and not business people. The annuity programme that the Government was trying to roll out could not be rolled out because the interest rates that our contractors were being charged by the banks were too high. Therefore, they were not able to take up some of the construction contracts like tarmacking of roads and doing other businesses. We have now left our road construction contracts to the Chinese who can go to Exim Bank and get cheap loans to run those contracts in our country. Our own engineers whom we have trained and entrepreneurs who are willing to invest cannot access cheap loans because banks have made it difficult to cap interest rates and the economy is not growing. If you go out there in the streets, many Kenyans will tell you that there is no money in circulation. That was not helped by the Central Bank of Kenya regulation on the amount of money that one can withdraw from his account on any given day, pegging the maximum amount at less than Kshs1 million, unless you have an explanation as to why you want to withdraw or deposit more than Kshs1 million. Therefore, many people prefer to keep their money under their mattresses. This is something that this House must address itself to clearly.

We must support this Bill that has been brought by Hon. Jude Njomo, who is a man for the time I have been in Parliament I have come to respect when it comes to financial issues. He did his best on this Bill in the 11th Parliament. Now, in the 12th Parliament, he has done his best on the same Bill. The people of Kiambu have put their trust in a man who has the interest of this country at heart.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Well spoken, Hon. Pukose. It is noteworthy that in the interesting case that was instituted against Parliament, the Attorney-General abandoned his submissions midway to join those of the gentlemen who had instituted the suit. It was an interesting case. It is good that you took note of it.

Hon. Atandi, hold your horse because you are lower on the list. I know you have interesting things to say on this one.

Let us now hear Hon. Wakhungu.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Speaker. First and foremost, I rise to support this amendment Bill. There are three arms of Government, and there is separation of power in the principle of checks and balances. Parliament is there to enact laws, the Judiciary is there to interpret them and the Executive is there to implement them. When we passed this law, it was Parliament that passed it. So, whoever went to court, the person who was to be sued was Parliament. It is unfortunate and disturbing to hear that later, Parliament was enjoined. It was not sued. The moving of this Bill shows that there was a conspiracy between CBK and Mr. Oduor. This Mr. Oduor, wherever he is, cannot run away from the fact that Parliament is there to legislate.

I want to take Hon. Members through the memory lane. Sometime back, before the capping of interest rate came into being, banks were making abnormal profits. My neighbours lost properties. People lost their matrimonial homes and land because banks were making abnormal profits. If you look at the Central Bank of Kenya Act, the responsibility of CBK is to regulate banks. However, those banks could not regulate themselves in a way that will make them have small profit margins. In the long run, that was like robbery without violence. That is why the servant of the people of Kiambu Constituency, Hon. Jude Njomo, moved this Bill. If I can remember, at that time, I was the one who seconded it. The Bill was passed. In fact, at that time, we thought His Excellency the President would not assent to it because we know – and it is in the public domain – that he has interest in the banking industry. That is not a secret. We should keenly look at Article 115 of the Constitution. We do not want an abuse when one is given an opportunity and there is conflict of interest.

This amendment Bill is as a result of the interpretation of the courts. I am happy that Hon. Jude Njomo has tried to align it to take care of ambiguity, its constitutionality and its discrimination. Common sense dictates that interest rate is annual. That is the practice. When you borrow money from a bank, if you talk of 10 per cent, it will never be for a period of one day or two days or one week. Anyway, it has been clarified in the Bill. It will be annually. Secondly, on the issue of discrimination, I am happy that Hon. Jude Njomo, in this amendment Bill, has clearly captured it. When Hon. Mbadi was seconding this Bill, he explained it well. When we talk about relevance, it is difficult to segment or distinguish the 4 per cent and the ambiguity issue. In the Finance Bill that will be coming to this House soon, most of the things in terms of removing the capping of interest rate will be discussed broadly. I am happy to note that the Finance Committee rejected that proposal. When that issue comes to the Floor of this House, we are going to reject it. If at all Article 115 of the Constitution on Presidential assent and referral will apply, I will call upon this House to turn up in large numbers to raise the two-thirds majority quorum to overturn the President's reservations.

We have so many things that have emerged and we need to have controls for consumers. We are here for the interests of consumers. Recently, as I checked my phone, I did not have money in my M-Pesa account, and I had a patient who had been discharged from hospital. His immediate relatives could not afford to pay the hospital bill. Somebody played around with my phone and discovered something called *Fuliza* M-Pesa. This animal called *Fuliza* M-Pesa is making abnormal profits. This service helped me to rescue that patient at that time, but I realised that Safaricom was charging abnormal interest rate. So, it is important that such services are also regulated. I want to know the banks that have partnered with Safaricom on *Fuliza* M-Pesa. This is happening through the backdoor. In line with Article 35 of the Constitution, Kenyans have a right to information. *Fuliza* M-Pesa might be easy to obtain but it is frustrating Kenyans. Right now, before you send money to somebody, you have to ask them whether they used the *Fuliza* M-Pesa service or not. Otherwise, if you send them money and they used the service, they will not get that money. So, on this animal called *Fuliza* M-Pesa, the Departmental Committee on Communication, Information and Innovation needs to summon Safaricom to appear before them. It is frustrating and fleecing Kenyans. It is robbery without violence. The interest rates of *Fuliza* M-Pesa are abnormal. It is making abnormal profits. In fact, it is negating the principle of this Bill. Safaricom also has *Okoa Jahazi* service, through which you can borrow some airtime when your account is depleted and you have no cash with which to replenish it. When I tried to use this service the other day, I realised that borrowers are charged 10 per cent per day.

If you tabulate that annually, it is also abnormal profit. If you borrow Kshs1,000, they take away Kshs100 immediately. Some of these things that come easily must be controlled, because they are fleecing poor Kenyans. Somebody who takes *Okoa Jahazi* or uses *Fuliza* is on the lower side of the economy. He is a poor person or of middle-level income. When you look at the interest rates, it is important, Hon. Jude Njomo, that we should open the scope and go after

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

the *Fulizas* and *Okoa Jahazis* because they are making abnormal profits. No wonder Safaricom has been making abnormal profits here.

Coming to the SMEs, the core business of a bank is to lend money to people so that they can do business. Those of you who have done basic economics, when you look at price elasticity, when the price of a commodity goes down, you expect the demand to go up. If the interest rates went down, we expect more people to borrow money. So, when you come to tell us that when the interest rates cap came in the amount of borrowing by the private sector went down, it is an issue of integrity and governance. Banks have colluded. It is a conspiracy. They have colluded and have decided to blackmail Parliament so that we are forced to remove the cap on interest rates. When you go to other jurisdictions, for example, in developed countries like the US, China or Japan, the interest rates on average are at 2 or 3 per cent. This encourages entrepreneurship and small business enterprises to rise but in this country the robber is the bank. We will not allow them. Even if it is in the Finance Bill, we are going to reject that in totality. We are telling Central Bank of Kenya and Treasury that it is not going to be business as usual. Banks should not operate in this manner in this country.

In a small town in this country, you will find all banks. Go to Kitengela, for instance, which is a small town you find all the 44 banks there. They are everywhere and that is how they rob Kenyans. We want them to give out the money. We do not want them to retain the money and give it only to the Government. For us to grow the economy of this country, it is through the small and medium enterprises. We are calling upon the banks, wherever they are, this is a governance and integrity issue. We do not want them to collude and try to frustrate the small and medium enterprises. Give out the money to Kenyans. This is how we are going to create jobs for the young graduates so that this country can go far. And those of you who are interested parties in this case, please, do not blackmail us. This is a small country with a liberalised economy. Even if we allow market forces to apply, we do not….

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken, Hon. Wakhungu. Hon. Wakhungu and the Atandis and Jude Njomos of this House, as we consider this, maybe, you might also want to consider lowering the liquidity ratio. I think it is 6 per cent. It used to be 10 per cent and then it went to 6 per cent. We should consider lowering it further to 3 per cent so that banks can make more money available to Kenyans. We might want to think about that. I can see Hon. Atandi nodding; he knows what I am talking about.

We shall have Hon. Mwirigi Paul, Member for Igembe South.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker. I stand to support this Bill by Hon. Njomo. It is the right time when we are supposed to stand as a House and ensure that all laws which are passed and assented to by the President are complied with. The banks have taken advantage of the borrowers. For someone to start a business, he or she needs to be funded by a bank so that he or she can better his or her life. But the trend is changing and the borrower is being exploited by the lending institutions. So, it is good for this House to say that the 4 per cent which is proposed in this Bill and which was assented to by His Excellency the President is taken into account. The citizens of this country should not be taken for a ride by the banks. At the same time, the computation of the percentage should be according to the proposed law. That should be an annual rate. In some lending entities, you will see within a month they have recovered around 10, 18 or 27 per cent, meaning that the person who borrowed the money is being used as a vessel to work and earn profit for the bank that has lent the money.

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

When this law becomes effective, the banks should adhere to it. It will be good for law enforcers to take into account those who will have contravened this law. You will realise that when this law was assented to, the banks did not take full action to implement it. The penalty of Kshs1 million or a jail term of one year is good so that the banks can learn a lesson. That will also control them in terms of observing integrity in the offices that they hold in those banks.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Omboko, Member for Emuhaya.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker, for giving me this particular chance to make a few comments on the Bill that has been presented before us by Hon. Jude Njomo. When I talked to him in the morning, like he indicated to the House, there were fears amongst us and many Kenyans that this Bill was supposed to negate the tag of 4 per cent that had been introduced to cap interest rates. But upon the Mover explaining to us, I want to thank him for having continued the work of Joe Donde as a defender of Kenyans on the issue of bank interest rates. I talked to Joe Donde some time back because we come from near each other and he said it was very difficult to have this law go through. Hon. Jude Njomo, this resistance will continue even as you pursue the passage of this amendment Bill. I also thank you for being very cautious that the courts had given us a timeline which was going to end before, possibly, we make these corrections which you have brought forward for us to make.

At the outset, I fully support the clear definition of what the maximum interest rates should be. I also support the base rate which is now clearly defined so that there is no ambiguity. Indeed, I also thank the courts because there was some ambiguity in the law. It is because by the time it was being passed, there was fear among the parliamentarians that it would be refused at one point or another. We have a chance of removing ambiguities especially when we talk about the rates and penalties. This is because a rogue bank can just pay the Kshs1 million continuously and negate the original law. So, I find this as a chance to make a better law in order to protect Kenyans.

The lending rates in this country have continuously inhibited Kenyans from doing business. The banks continuously try to circumvent the law. The situation that Hon. Jude Njomo was explaining is a clear conspiracy which happens daily in this country. You go to the courts and sue the wrong person… You also sue other people you have already talked to. What you were entering into… Hon. Temporary Deputy Speaker, you are a lawyer and you understand these things. This was consent between the Central Bank of Kenya, Mr. Oduor and the other parties. So, they walked away with it. I thank Parliament because it got enjoined. We must warn them that we shall continuously remain the defenders of the ordinary Kenyan who are trying to do business in this country. They should know that this is a law we shall not stop pursuing even when the Finance Bill comes before us. I thank the Members who have already made a comment on this matter. We shall have to see how we stand with the normal Kenyan on the issue of interest rates and not allow these laws to go to the extreme. Much as the President would want to take over the law-making process… Of late, His Excellency the President has been making too many laws by simply referring them here, exploiting our party differences and lineages and finally walking away with laws that are not good for Kenyans.

I think Parliament has matured since the time we began. We have gone through that storming stage and we are now in the normalising stage. We should now be performing. When

Disclaimer*: The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

the Finance Bill comes here, we should perform for Kenyans and not for our parties. Therefore, this law is good but it must capture other players who have been talked about.

I do not want to over-emphasise *Fuliza*. Those platforms and other shylocks that are lending money to Kenyans are just circumventing this law and yet, when you look at it very clearly, it includes individuals. So, as this law becomes operational, I ask the implementers that we capture all institutions that are lending money to Kenyans so that they can also operate within the 4 per cent lending limit.

The threat that was mentioned here yesterday that reduction of the per centum interest on lending has made it difficult for the banks to give money to SMEs is a fallacy that is created by the banks themselves. I am a student of economics at my own level and I know that once the lending rates were reduced, we should have seen more money being given to SMEs. So, this is being done intentionally. Could we go back and look at the times of President Kibaki? He inherited one of the weakest economies in Kenya after retired President Moi. He deliberately decided that he was not going to borrow from the banks. The banks came to schools hawking loans and it worked magic! That is how most of the teachers and other people at the low cadres managed to borrow from banks. Originally, no teacher could have had a relationship with a bank but, courtesy of President Kibaki, who insisted that his Government was not going to do local borrowing in form of Treasury Bonds and Bills, the money was hawked in staff rooms. That is what we want to see. It is the Government which is encouraging banks not to give money to the SMEs because it is over-borrowing locally. The Government actually pays higher interest rates compared to what individuals would be charged. Therefore, I ask the Executive to put a capping, or totally stop, like President Kibaki did, from borrowing from the local market. This will make banks give loans to the SMEs. Banks are now threatening us that this is not working, which is against the law of demand and supply.

With those few remarks, I thank you. I totally support this law. I ask the House to also remain hawk-eyed when the Finance Bill is brought to the House.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Omboko, you have spoken music to the souls of the many suffering Kenyans. We shall now have contribution from Hon. Rasso Ali, Member for Saku Constituency.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I support this Bill by my friend, Hon. Jude Njomo.

Fundamentally, what is before us is a Petition that has been filed by one Mr. Oduor. This House must look deeper into what was the strategy behind the filing of that petition. The strategy of the petitioner was to knock out interest rate capping that was unanimously passed by this House in 2016. If that position fails, it was to put aside the interest rate capping through very smart canvassing in the court.

In this petition, what comes to light is that the CBK must be put in the spotlight in this case. Article 231(2) of the Constitution talks about the independence of the CBK. With regard to this petition, the Kenya Bankers Association (KBA) and the CBK appear to be in collusion; that the interest rate capping that this House passed several years ago should be done away with. What the petitioner has set out to prove is that this House has usurped the role of the CBK. Secondly, he talks about discrimination of the banking sector of the Republic of Kenya. In the judgment, the judges rightly said it is ambiguous and wanted clarity on the terms ‘credit facility’ and ‘loan’. Hon. Jude Njomo has come out clearly that instead of the word ‘credit facility’ we should have the word ‘loan’. This being a known entity that is suitable, comprehensive and clearly understood by Kenyans out there. This Bill also sets out to reaffirm the maximum interest

Disclaimer*: The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

rate. The banks should not go more than the 4 per cent of the set interest rate by CBK. A few fundamental constitutional points why this House must seize itself of this matter of finance and the economy of this Republic is Article 95(2) of the Constitution. That this House must discuss matters that resolve around issues of concern to our people. Article 95(4) of the Constitution on oversight, the CBK being an independent entity under the Constitution, this House must oversee its running. Its policies, deliberations and matters of jurisprudence over the banking sector in Kenya must be seen to be proper and right by this House.

The petitioner might not have understood the role of Parliament under Article 94(5) of the Constitution. Under this Article, no person or body other than Parliament has the powers to make laws in this Republic. Therefore, we are within our rights as legislators in this House to discuss and talk about matters of concern to the people of this country. This is about pure and basic economics because if we cannot talk about interest rates, then we cannot talk about entrepreneurship, economic growth and availability of money in the pockets of many out there in the streets. We want our people to do business. Where will the money come from if the banks will charge exorbitant interest rates which almost make them a forbidden no go zone?

Parliament must help in growing the economy and one of the things we are looking at is the 4 per cent. When we follow international news, the Federal Reserve Bank of the United States of America (USA) and the Bank of England (BoE) set their interest rates in such a way that, if they are more than 2 per cent, they are high. Sometimes, the escalation of the interest rate is by 0.25 per cent. They are very clear on why this is done. The Republic of Kenya is a developing country. If developed countries are able to do this and yet all sectors of their economy are grown and some control the world, then why can we not do the same?

One of the projections of Vision 2030 is that the Kenyan economy will grow to the extent that it will become a middle-income country. How does it become a middle-income country when, by that time, the middle class will not have reached the extent of contributing to the economy?

There are issues of financial discipline concerning the mobile money aspect. Sometimes, we are told that the market forces should dictate what should happen in Kenya. I think we should not do this and this House must do due diligence by looking after the economy of this country and its people.

With those many remarks, thank you, Hon. Temporary Deputy Speaker for giving me a chance.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Nguna

Hon. Charles Nguna (Mwingi West, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity. Indeed, this is a very emotive Bill that has been brought to this House by Hon. Jude Njomo. I find it very difficult to speak when the economy is like Hon. Wamalwa has said. But, allow me to add my voice to it.

Capping of interest rates work all over the world and mostly in developed countries. But, of late, I have seen sub-Saharan African counties implementing interest rates capping. As I recall, interest rates play a very big role in terms of spurring economic growth. Interest rates are one of the key macroeconomic valuables in any country which drive all other macroeconomic valuables like inflation and Gross Domestic Product (GDP). So, it is important for us to focus on amending this Bill that has been brought by our fellow Member.

I can recall the history of when this Bill was first introduced to this House some years back. There was collusion from the banking sector, which is oligopolistic by nature in this country. Most banks resulted to laying off staff and borrowing from the Government instead of

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

lending to the riskier small loan seekers. That is why we need to review this law so that banks can start lending money to local consumers. I support this Bill based on the fact that most of our youth have brilliant ideas, but do not have access to funds and capital when they want to start a business. For us to drive the Big Four Agenda in terms of manufacturing and job creation, we have to ensure there is unlimited access to credit facilities and, specifically, cheap credit. It is not a private matter that our President is a key person in the banking sector.

Our President is one of the key people in the banking sector. If at all we will successfully implement this law, he has to shed of the conflict of interest in this sector and approve this Bill. I recall Safaricom itself is actually unscrupulously charging Kenyans in this service called *Fuliza* and many platforms which are lending Kenyans money. So, if we extend the amendments to other platforms in regulating our market in accessing credit, it will help many Kenyans. I do not want to repeat so much.

With those few remarks, I support this amendment. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Jesire, Member for Baringo.

Hon. (Ms.) Gladwell Cheruiyot (Baringo CWR, KANU): Asante sana, Mhe. Naibu Spika wa Muda kwa kunipatia nafasi ili pia nichangie Mswada huu ambao umeletwa na Mhe. Jude Njomo. Hata kama jina si langu, kuna Mheshimiwa mmoja alikuwa amesema anaitwa Judy Njomo. Nadhani yeye si Judy lakini ni Mhe. Jude Njomo.

Mimi pia naungana na wale ambao wanasema Mswada huu ni muhimu. Sisi Wakenya tumepitia mambo mengi kupitia kwa fedha ambazo tunaomba katika benki zetu. Watu wetu waliumia sana tulipokuwa tumepatia benki zetu nafasi kubwa ziweze kufanya kazi jinsi ambavyo zinafikiria. Ni jambo zuri kuona kwamba Bunge hili la 12 limepewa nafasi na Mahakama Kuu ya Kenya wakati ambapo mtu mmoja anayeitwa Boniface Oduor alipoenda kortini kusema kwamba Mswada uliopitishwa na Bunge la 11 kwamba watu wanapoomba pesa, wapewe kiwango fulani ambacho wanaweza kumudu…

Bw. Oduor alishirikiana na wengine kwenda kortini ili waweze kusimamisha jambo hilo na wazipatie nafasi benki zetu zitoze watu ushuru ule wanataka wao wenyewe. Limekuwa jambo la kusikitisha mimi nikiwa mama wa Kaunti ya Baringo ninapopata simu za kina mama wakinipigia wakilia jinsi ambavyo wanatozwa pesa wakiwa wanauza mboga. Wako na shida nyingi maana wanaitishwa fedha ambazo hawana. Zile kidogo wako nazo wananyang’anywa. Hata ng’ombe wao wanachukuliwa na wanakuwa na maisha hohe hahe kwa sababu ya hii mikopo ambayo wanaomba kwa *shylocks*, ambayo hawajapatiwa njia ya kufanya kazi inavyoweza kufaidi Mkenya wa kawaida.

Ni vizuri kujua kwamba Bunge hili limepewa miezi 12 ili kuangalia Mswada huu na tuubadilishe ili uweze kumfaa Mkenya wa kawaida. Ni vizuri tumshukuru Mhe. Jude Njomo maana amekuja mbele hapa ili tuweze sote kusaidiana kuona kwamba Mswada huu umepita. Ni kweli kwamba wajenzi na wafanyabiashara wakubwa nchini humu wameumia sana maana hawawezi kuomba fedha za kufanya biashara na biashara nyingi zimeenda kule China. Fedha nyingi zinatoka nje ya Kenya ndiposa hapa Kenya tunalia kwamba hakuna pesa. Kama fedha hizo zinatoka nchi hii na kupelekwa nchi zingine, itakuwa si vyema kwa sababu watoto wetu ambao hawana kazi wangenufaika iwapo fedha hizo zingebaki hapa. Pesa hizo pia zingetusaidia kufanya biashara kubwa kubwa hapa nchini kama kujenga na kufanya mambo mengine.

Inasikitisha unaposikia kwamba huko Uchina wanatozwa riba ya asilimia 4. Huku kwetu, tunaitisha asilimia 18 hadi 20. Hakutakuwa na ushindani kwa hali inayofaa. Inafaa tuangalie ili

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

tuweze kuwafaidisha Wakenya kwa sababu Kenya ni nchi ambayo bado inaendelea. Hatujafika kiwango ambacho tunasema kwamba tumeweza kujimudu. Ni vizuri kuangalia miswada ambayo inafaidi mkenya ili Kenya iweze kunawiri.

Mimi nimependa Mswada huu kwa sababu kuna mahali unasema kwamba yule mtu anayesimamia benki ndiye anayeweza kuulizwa ajitokeze aseme sababu zilizomfanya aende kinyume na sheria ambayo itawekwa ya benki. Hii ni muhimu kwa sababu hapo mbeleni ilikuwa inasemekana tu benki na haikuwa inawekwa kwa yule mtu anayesimamia benki hiyo, iwapo wataenda kinyume cha sheria na kazi ambayo imetengwa na Bunge hili ama sheria zetu.

Nimesikia Mhe. Jude akisema kwamba kuna shida katika nchi hii kwa sababu wale watu ambao wanarithi pesa ambao kwa Kiingereza wanaitwa *next of kin* katika ule uwekezaji wa fedha, Mpesa na hata hii inaitwa Tala na Fuliza, hakuna mtu anayejua kabisa kinachoweza kutendeka. Iwapo mimi kama Mhe. Gladwell kwa bahati mbaya, na Mungu anirehemu nisipate shida, nipate kwamba sina maisha tena, tuko na uhakika gani kwamba benki itawaita watu ambao nimewaandika kama *next of kin* waambiwe: "Mhe. Gladwell alikuwa na pesa kiwango fulani kwa benki yetu na kwa hivyo yule ambaye ameachiwa fedha hizi ni wewe?"

Tunataka *Auditor-General*, kama hii kazi iko mbele yake, pia atueleze katika hii miaka ambayo tuko, benki zetu zimebaki na pesa kiwango gani ambazo zinadaiwa na wale watu wanaitwa *next of kin*. Hapo pia pana shida. Watu wanakufa na kuwacha simu zao zikiwa na fedha. Hizo pesa zinaenda wapi? Hayo ni baadhi ya mambo ambayo tunataka kusikia yameangaliwa ili Wakenya wasikae wakiwa na hofu. Ndiyo sababu unaona watu wengine wanaweka pesa zao kwenye godoro.

Mswada huu umekuja kwa wakati unaofaa. Mambo ya uombaji wa pesa kupitia simu unaofanywa na watoto wetu ambao ni wanafunzi umewaathiri wazazi wengi, mimi nikiwa mmoja wao. Kila wakati mtoto anakwambia "Mama niko na deni." Mara wanasema: "Usiweke kwa hii laini, wacha ninunue laini nyingine" au "Tuma kwa rafiki yangu". Sijui inafaidi nini nchi hii ikikopesha watu pesa ambazo kiwango chao cha riba ni cha kila mwezi na sio cha kila mwaka.

Kiwango hicho cha riba kiko juu. Kinawaumiza sisi wazazi kwa maana watoto wanapoenda kuomba fedha, hawahitajiki kudhibitisha kwamba wanafanya kazi au la. Bora tu una nambari ya simu, unaweza kuomba pesa na hawajui mtoto atalipa vipi pesa ile. Inakuwa kwamba bado tu ni mzazi ambaye atalipa fedha ikiwa ni Tala, Fuliza au nyingine. Ni muhimu kwamba CBK iweze kusimama imara ili kuweza kulainisha mambo ambayo yanasumbua Mkenya. Haifaidi kitu iwapo benki ambayo labda iko na watu 1,000 inafaidika na uombaji wa pesa kupitia pesa wanazotoza Wakenya na Wakenya wanaumia kila uchao.

Ni muhimu kusema kwamba wakati huu ambapo mwezi huu unakaribia kuisha, bado kuna Wakenya ambao hawajabadilisha fedha za zamani. Ni muhimu benki zetu ziwakumbushe watu au wawekezaji wao waweze kurudisha pesa hizo. Nilikuwa ninatazamia kuona runinga zetu zikieneza taarifa hii lakini hilo halijafanyika. Katika Bunge hii la 12, nimewasikia wenzangu hapa wakisema kwamba, kwa sababu Rais wa nchi hii pia anafanya biashara ya benki, wako na hofu kwamba anaweza kukataa kupitisha Mswada huu. Si vyema kuanza kufikiria kwamba kuna jambo kama hilo. Ni vizuri tuwe na tumaini kwamba Rais wetu ana moyo wa kusaidia Wakenya na iwapo tutapitisha Mswada wetu, atauangalia kwa kindani na kuupitisha ili tuwasaidie Wakenya.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken, Member for Baringo. But the President is the President of all Kenyans. I am sure when he looks at these matters, he takes care of the interests of Kenyans from the debate that emanates from this House. I am sure he will be appropriately guided.

Let us have Hon. Atandi.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I rise to support the amendments as contained in the Banking (Amendment) Bill, 2019. Though what we are discussing is occasioned by a High Court decision, the amendments that have been brought by Hon. Jude Njomo have actually made this law better. The law is now very clear. The ambiguities in definitions have been clarified. I fully support the amendments. I want to inform the House that the big animal in the Finance Bill concerning the repeal of interest cap law is coming. Members need to be aware that the Finance Bill has recommended a repeal of Section 33B. We are getting ready to tackle that when the time comes.

[The Temporary Deputy Speaker
(Hon. Christopher Omulele) left the Chair]

[The Temporary Deputy Speaker
(Hon. Patrick Mariru) took the Chair]

There are certain facts which Members of Parliament need to be aware of when canvassing matters to do with banking. First, banks are classified into three segments. The segments are called tier 1, tier 2 and tier 3. Tier 1 are those banks that are big, heavily capitalised, make more profits, are arrogant and the reason why we have a negative attitude towards banking profitability. There are tier 3 banks which are the small animals within the banking segment. These are small banks which are not capitalised enough. They have challenges meeting their cash ratios and problems lending large tickets. They make small profits. When Members of Parliament legislate on matters to do with banking, it is important for them to be aware that there are small and big animals. This is important for informing the kind of laws that we will make to regulate the sector.

Looking at the financial sector in other more developed countries, you find that banks are few. In China, banks are few and big. There are banks that can give credit to governments. Our banks cannot. In fact, our banks cannot even fund new ideas. They only fund ongoing ideas. As a Parliament, we need to get to a situation where we have large banks where you can simply go with an idea and they give you money and a grace period of maybe two years for your idea to germinate. That does not happen today.

One of the things I urge this House to do in future is probably to encourage what is happening now, namely, consolidation. Right now, a lot of banks are consolidating. They are coming together so that we create a few large banks that can fund business ideas to fund the economy. There is no reason why when the Government wants credit from financial institutions they have to go to foreign countries like China and Europe. Why should they do that? They are doing that because our economy does not support big banks. This is something that this House needs to look at and appreciate. How do we create large banks that can support the economy? We can do this through consolidation.

Secondly, let us legislate on the capital requirements for banks. We need to increase the capital ratios for banks. Let us agree that to start a bank, you need to have Kshs20 billion. A bank with a base of Kshs20 billion can do business. We will need to collapse these small banks and

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

have six large banks in Kenya. That would mean that we need to look at the capital requirements for starting a bank.

The other issue which we need to apprise ourselves on is that there are fundamentals that influence banking activities like the widening fiscal deficits. Every year we pass a budget in Parliament whose funding we are not even sure of. We pass a budget and the deficit is very big and then we expect the Government not to borrow money from banks. One of the things that we must do, especially in the coming financial year, is to ensure that we pass a budget which has a very small fiscal deficit. We will then be able to say that the Government should not borrow from banks. Otherwise, if we sit here and condemn the Government for borrowing from banks then we are not being honest with ourselves. Let us bridge that fiscal deficit then the Government will have no option but not to borrow from the banks.

That is the reason why I am happy that currently, the Executive is doing what is called budget rationalisation. They are asking ministries to see what they can cut. This is something that we support and it needs to be done. The budget needs to be cut by 50 per cent. If that happens, we will head somewhere. When banks speak against this law, they use what is called small and medium enterprises (SME) credit as a smokescreen to cheat Parliament and Kenyans that there are SMEs which need credit and that this law is holding them back. As a professional in the banking sector, even if we remove this law, there is no way that banks will give credit to SMEs. We will not be able to force them. They would still continue to give credit to people they consider credit-worthy and sectors that will give them more profit. They can still refuse to give them credit. The argument against the interest cap law cannot sell. It does not carry weight.

I urge the House that when we finally present the Finance Bill in this House which has a ridiculous proposal to repeal the law itself in its entirety, let us reject it. Let this House stand with Kenyans in ensuring that the cost of credit does not go up. Currently, even at 14 per cent, businesses across the country are unable to pay their loans. Today, the Credit Reference Bureau (CRB) continues to list all businesses. They are doing that because the cost of credit is still very high. Nobody should cheat this House that the interest cap regime which we are currently discussing is hampering businesses. It is trying to help businesses to a small extent. If you want to compare the credit regime in Kenya *vi-a-vis* other countries like South Africa, loans cannot be prized at even 10 per cent. We need to do much more to lower the cost of credit but that will mean that this Parliament must take decisive action in ensuring that our budgets do not have a wider budget deficit. I support the Bill.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well. Before I give a chance to the next speaker, I will recognise in the Speaker's Gallery, Mumui Secondary School from Kipipiri Constituency, Nyandarua County. The school is welcome to follow the proceedings in the House this afternoon.

What is out of order, Hon. Dawood Rahim? What is the intervention for?

Hon. Rahim Dawood (North Imenti, JP): Thank you, Hon. Temporary Deputy Speaker. I ask for your indulgence and the House's indulgence in discussing this Bill on interest rates. Ten minutes is a lot of time and there is so much interest. I request that we reduce it to either three or four minutes so that many people can voice whatever we have to say regarding this Bill because it is very important to everybody.

Hon. Temporary Deputy Speaker, I ask for your indulgence.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Dawood, I have heard what you have said. Procedurally, if you were to reduce the time to contribute, that should have happened at the commencement of the Bill. Therefore, that cannot be done midway because

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

some Members have contributed for 10 minutes. We cannot reduce the time to contribute. If you look at the interest in this law and the Members who have registered to contribute, if they agree to contribute for less time, we will have double the number of Members contributing, within the time that is remaining. Maybe you are convincing the Members whom I will give the opportunity to contribute to reduce their time so that their collegues will get time. Let us see whether your suggestion is persuasive to the Members. Let us see it with Hon. Wachira Kabinga, who is next.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to contribute to this very important Bill. I really want to thank the Member for Kiambu, Hon. Jude Njomo, for being consistent in fighting for *Wanjiku's* interest when it comes to matters of banking. May the people of Kiambu Constituency know that their son is contributing to their good welfare and that of the rest of the Kenyans.

I also want to thank the Judiciary for finding it necessary to postpone the enactment of the judgement that was made by one year, so that we can have enough time to re-look at this Act and come up with these amendments which are straightforward. They are just making things clearer so that the ambiguities that were in the original amendment can be clarified. In doing so, I also urge the Member for Kiambu not to get tired, but move forward and also look at other areas of banking, including the mobile banking where we also have problems. This also includes the informal sector that is completely ignored and yet a lot of transactions take place there.

Where I come from, in Mwea Constituency, we farm. I am aware that our farmers do not possess legal documents that can allow them to move into banks and get credit facilities. Therefore, we have people in informal sector who have taken advantage of these farmers and they continue exploiting them. It is high time the Member for Kiambu, Hon. Jude Njomo, comes in to look at that sector too.

I can see that the Member is so busy that he may not be listening to some of the key points that I am raising. The other area that he needs to look at is the Microfinance Bill. When this Bill was passed in 2015 and became an Act of Parliament in 2016, the microfinance institutions took it to the lawyers who interpreted that the law does not apply to them. For that reason, Kenyans are charged much more interest through microfinance institutions. Some of the banks were innovative enough to open micro-financel institutions so that they can continue exploiting Kenyans. Therefore, that sector needs to be looked at so that this Bill can directly also touch on the Microfinance Bill. The interpretation has been that the Bill only affects the Banking Act and that it does not concern the Microfinance Act. That is how these institutions have been able to run away from this particular Bill and, therefore, charge interest that is higher than the 4 per cent capping over and above the CBK's base lending rate.

There are many challenges that entrepreneurs and the business community have been facing ever since this Bill became law. It is high time banks re-looked at some of the areas that they put strict conditions for borrowing. If banks can adhere to this particular Bill, they can expand their lending base. More Kenyans would walk in and borrow loans. They do not only need to look at one big fish but small fish that will end up giving them the capital that they are looking for. These strict conditions are really bad for upcoming entrepreneurs. Banks in the old days were partners with would-be borrowers. They would even go to an extent of helping them to build business cases so that they can succeed as the bank is also making money. Today, banks are only interested in those people who have institutions that have already succeeded in their work. Therefore, they do not take risk in their work. They are risk free. That is why we hear of billions of shillings being made by these institutions whereas our economy is at a standstill or not

Disclaimer*: The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

developing. I therefore urge our banks to look at the advantages of working together with the would-be borrowers, so that they can be partners but not just lenders.

I also urge the Government to minimise its borrowing from the local banks. By doing so, the banks have found an alternative to business lending and have turned to the Government as its major customer. As we are talking about this Bill, it is upon the Government to also come in and support it indirectly by not borrowing much so that banks can find it necessary to adopt the recommendations of this Bill. It will also reach out to the would-be borrowers without ignoring them in the name of having an alternative market. As we do so, we also need to ensure that there is more civic education to our communities and businesses so that they can know their rights and responsibilities.

One of the amendments in this Bill seeks to punish the customer for accepting to be given loans at a higher interest rate than it is recommended in the Bill. This is something that most of the business communities out there will take time to understand. We, therefore, urge the CBK, as a regulator, to increase civic education. When some of our people borrow money today, they do not understand the loan statements. Most of the time, the loan statements are never given out. Therefore, they do not know the kind of charges that have been levied on the loans that they have borrowed. Consequently, our business communities and sectors go down. People borrow and instead of doing well, at the end of the day we see auctioneers who go for their goods. In some cases, they end up in an asylum because that is something that they never expected.

Therefore, I am asking the CBK officials to support *Wanjiku* because that is why they are there. As they support the banks, they must first and foremost know that they are there to support the business communities and *Wanjiku* who is not well educated to go through that statement to understand it. It is ridiculous when somebody borrows Kshs10,000 and ends up paying kshs20,000. That is not developing a country but killing it. I have seen cases where people borrow Ksh200 million for business and they end up paying Kshs150million out of that loan. Because they are unable to do so, they end up being auctioned or they struggle to pay in their life time. This is something that needs to be looked at. As much as we embark on the law, if we do not embark on civic education, our people will continue losing money through ignorance. I know that they are not ignorant, but they need more education so that they can understand their statements.

Finally, the threats issued by banks that this is a bad law are not genuine. All they should do is to reach out to the larger community. Kenya is growing in terms of population every day. If banks are innovative enough, they will tap a lot from the growing population of the country.

Hon. Temporary Deputy Speaker, I support and urge my brother to be keen on the informal sector. Farmers in Mwea are dying. They sell land and at the end of the day, they make nothing.

I beg to support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): It is instructive for Hon. Dawood to note that Hon. Kabinga was not persuaded to take less than 10 minutes. He took exactly 10 minutes. Hon. Dawood had pleaded with Members that if they took less time, definitely they would have space for more Members to speak to this issue. But we cannot bind them because it was just a persuasion. Before I give a chance to Mutua Barasa, let us have Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to also support this amendment Bill. As it has been said by my colleagues, this Bill arises from a judgement made by the High Court in regard to Section 33 of

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

the Banking Act. The judgement said that this particular section is unconstitutional and discriminatory. The amendment by Hon. Jude Njomo is timely. It is a perfect amendment Bill to resolve the issue of interest capping. We should be aware that Parliament has been given 12 months to make the amendments and have the law in place before 14th March 2020, which is not very far from now.

This amendment Bill will actually deal with the problem of what some Members have called abnormal profits. In my case, 'abnormal profits' is an understatement. Banks were making astronomical profits before interest rates capping came into place. So, this is a very welcome Bill. The argument of removing interest rates capping so that they make loans available to SMEs does not hold water. I agree with the Departmental Committee on Finance and Planning. I saw they rejected that argument from the Cabinet Secretary for the National Treasury and Planning. The Government should not be seen to be pushing the interest of banks. That argument, in fact, gives us the reason that we need to have the capping in place. I agree with Hon. Wakhungu that this is one Bill we need to pass and make sure that it goes through all the stages very quickly, if possible this week. We need to have it passed in the Second Reading, Committee of the whole House and then taken to the President for assent. We have seen that the Finance Bill proposes to delete Section 33 of the Banking Act and basically take us back to the regime when we did not have interest capping. When time comes for us to debate the Finance Bill, 2019, we should reject that amendment. If need be, when and if the President sends it back with reservations, we should be able to raise the two-thirds majority required to shoot it down because Kenyans have continued to suffer because of high interest rates.

In 2016, when the law was passed, there was a lot of misinformation emanating from banks. They told Kenyans that the new law would make it very difficult for them to recover costs. They also told Kenyans that this law will promote slow growth in the banking sector. They told Kenyans that it would reduce service delivery in rural areas. They told Kenyans that it would lead to mass exit from the market. Nowadays there is a bank in every village market, in fact, more than one bank. So, those were lies. In fact, interest rate capping has had very positive effects on the economy. For example, if I may demonstrate, the number of non-performing loans has generally decreased across all economic sectors because people are able to pay back the loans. It is because of the low interest rates. That is something positive to the economy. Even banks are still making profits because they have devised other ways of raising money. They are still making profits because they have reduced general expenses that were incurred on auctioneer fees and non-performing loans. They have had those expenses reduced and that has generally affected their level of profitability. We have also seen an upsurge in the non-interest income for banks. In fact, non-interest income for banks has gone higher than the interest income. This is because banks have come up with other measures to increase non-interest income through charges and fees. They even charge loan insurance on overdrafts. And they also charge extra fees on government securities. So, it is not true when they tell us that they are not making money. They are misleading us.

The Government's appetite for borrowing is an issue Parliament must deal with. The Kibaki regime did very well in managing Government borrowing. But we are now seeing an upsurge of Government's appetite for borrowing. This is where the problem starts and it is the very reason we need to put in place interest rate capping. If we do not have interest rate capping and the Government continues with its appetite to borrow, then interest rates will even go higher and higher. That is the reason we need to maintain it. If Government borrows from the economy, we will have higher interest rates, higher interest payments, tax rises and even crowding-out of the private sector in terms of access to loans.

This is a very timely Bill. One thing the banks in Kenya should do is to reform. We have many banks in the country. I think we have more than 47 banks in the country. It is high time the Central Bank Kenya introduced reforms so that small banks merge with big banks so that we have few banks. This has happened before. When Nigeria had so many banks, they came up with reforms to merge the small banks into big banks. Now, Nigeria being the largest economy in Africa has almost half the number of banks we have in Kenya. These are some of the administrative and policy issues that the CBK should be doing. Members have also talked about mobile money loans. The Departmental Committee on Communication, Information and Innovation came up with a report which was adopted by this House. The Communication Authority (CA) and the CBK should take up the role, implement the report and have Kenyans protected from unregulated mobile money loans.

With those many remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Mutua Barasa.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to support these amendments. I support these amendments because they will realign this law with what the court wanted us to do. We need this law. We must fight for this law to exist as if our life depends on it. I say so because a big number of Kenyans earn little income. This law seeks to protect them. This law is going to support small and medium-sized enterprises. we speak, there are very few Kenyans who go to banks for loans because the interests that are being charged are exorbitant. Even if you get a loan and you open a business, the amount of money that you will pay back to the bank looks like you own the business jointly with the bank. It is as if they are shareholders. So, we must support this law, fight for it by all means.

We have very many young Kenyans who are graduating from universities and institutions but there is no employment. As leaders of this country, we have been on the forefront educating them that they should employ themselves. How are they going to employ themselves if there is no money? The only avenue for them to get money to start this business is through bank loans. This law is going to support the creation of very many SMEs. It will reduce the percentage of unemployed Kenyans because they are going to venture into business by getting loans which they can afford to pay.

There is no Kenyan who does not support economic growth of this country. The drivers of our economy are SMEs. So, this law capping interest rates is going to spur development especially in rural areas. We have rural women who put in a lot of effort by venturing into business like selling groceries in order to support their families. So, this Bill is going to support rural development and we must support it as a House as quickly as possible.

This House has passed very many laws that are friendly to the rich people. This is the only law that targets to improve the lives of the Kenyan people who live below the poverty line and those who do business. Therefore, we must ensure that this law passes. We must ensure that we do everything possible to persuade our friends who are of the contrary view.

I am happy that these amendments are suggesting penalties to the CEOs of the banks that will flout these regulations. They must be guided by the law. They must follow this law and those who will go against whatever this law proposes after it has been assented to by the President must find some way to go to spend some time in prison. I will be happy as a Member

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

of the Departmental Committee on Administration and National Security to increase the budget for their ration so that they can cool their heels in prison.

For us to move forward, we must close our ears. I know it is important to listen to the banks but we cannot open all our ears to listen to them. They must understand that when you are doing business, you must exercise patience and grow your net profit. You cannot become a millionaire in a short time by charging exorbitant interest rates. Let them be patient and grow their banking sector. They should not desire to grow overnight by charging exorbitant interest rates that impoverish Kenyans. That is not going to be acceptable at all. I know and I want to tell this House that those Kenyans who are against this law are people who are engaging in a banking business. I want to tell them that Kenya does not belong to them only, it also belongs to *mama mboga* and pastoralist communities that are relying on rearing cattle for livelihood. They must also be considered in terms of how much interest they will pay when they get loans from banks.

We expedite approval process for this law. As my good friend, Osotsi, has said, even if the President refuses to sign this Bill into law, we must bring to his attention that Members of Parliament represent the people, and the will of the Kenyan people. Everybody in this country agrees with this law and the need to cap interest rate.

Let me end there so that I donate my time to my other colleagues who also want to contribute. I am donating my time for them not to oppose but to support.

Thank you.

The Temporary Deputy Speaker (Hon. Patrick Mariru): You were almost done, Hon. Mutua. Let us have Hon. Gichimu Githinji.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to support the Bill. One thing I like and appreciate about the ruling is that it was in agreement that this is a good law for Kenyans. That is why they could not repeal Section 33B but gave guidance on how to have some clarity on some issues. One of the issues that clarity was being sought is on the issue of the credit facility. Had it remained the way it is, then the section would have given banks a leeway to apply higher interest rates on financial guarantee which would have created a lot of disparity in terms of advancement of loans to persons interested.

Hon. Temporary Deputy Speaker, I note that economic growth in this country will not be attained by only giving money to Kenyans. It will be achieved through how the money is given and how it can help Kenyans in terms of ensuring that the bank interest rates are not punitive. One thing that is good about this Bill is that it gives uniformity on how banks should operate. If you have to give a different interest rate, it has to be below 14 per cent since the current rate by the CBK is about 10 per cent. We had situations where banks used to lend at 28 per cent, 20 per cent or 22 per cent interest rates. It was a free market for all and in whatever form the banks wanted to deal with issues of interest rates. Kenyans should know that the Bill had already passed, and that it is only clarity that is being sought. It is not a new Bill that is being introduced or a new law that is being formed.

This Bill applies to banks and other financial institutions. Even micro institutions are also covered because the definition of a financial institution according to the Banking Act is a company other than a bank which carries on or proposes to carry on financial business. Financial business is further described as accepting money from members of the public and also employing the money held on deposit or any part of money by lending on investment. So, any institution that lends moneys or invests is also affected by this Bill and this section. It is high time those who call themselves micro-institutions know that they are also affected. Also, they should not charge interest rates which are more than 14 per cent, whether they are macro or micro-finance institutions.

The other issue about this Bill, as now amended, is that it conforms to the Constitution because it also affects both the borrower and the lender. One of the areas that the court identified as a bit unconstitutional is that the Bill seemed to give a punitive aspect to the lender and left the borrower. If you borrow money from a financial institution on terms that contravenes what this Act provides, you are also culpable.

Because a lot has been said about this Bill and everyone supports it as I do, I will stop here in the interest of time and due to the fact that I would like as many Members as possible to contribute. Because I have 10 minutes, I donate my remaining minutes to the Member for Kinangop.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Gichimu, you extended your grace too far. You do not have that prerogative. The next one shall be Hon. Odhiambo Akoth.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I am just concerned about this new procedure of Members donating their time and not the Speaker giving chance to Members. I am also concerned about the issue of ranking. You are a lawyer and you understand ranking. It applies in the court corridors. It must apply in this House.

I want to support this Bill because Parliament has come a long way with this Bill – from Joe Donde to Jakoyo and Hon. Jude Njomo, who has been very consistent. I thank him for that. With the Atieno's and Wanjiku's on this world, it is a very popular law but very unpopular with the banking sector. We must, as Parliament, make sure that we do what is right for the ordinary Kenyan, especially going by what we see globally. We see a rise of xenophobia in other countries; we see very unfavourable immigration laws in other countries.

In the past, when we had Kenyans who were capable and were not absorbed into this country, many had to go to other countries. We must, as a country, fix our nation. We must be able to employ people both in the formal and informal sectors. Many Kenyans are self-employed through SMEs. For them to do that, they must be able to access loans at favourable interest rates.

I disagree with Hon. Tong'i on what he said while speaking earlier on. A lot of Kenyans take loans to fund their social life, buy suits and that kind of thing. Of course, there are few misguided people who will take loans to marry second wives and buy suits but on the whole, Kenyans are really struggling and suffering. When people take loans, they do so to enhance their businesses and not for those other reasons. If you look at this law, after the Jude Njomo law was passed, there was a court matter *Boniface Oduor vs Attorney General & another,* Court Petition 413 of 2016. The two primary things that the court decided on was whether Section 33B (1) and (2) of the Banking Act were constitutional for being vague, ambiguous, imprecise and indefinite. What this law seeks to do is make those provisions precise. The other issue was that it declared Section 33B (3) unconstitutional for being discriminatory, especially with regard to the penal provisions. Again, this Bill seeks to cure that problem so that we do not have a case where we have discriminatory provisions or where the capping is not very clear.

I know I will not say much because we have a short time. I support. Since the House had spoken to this issue, what we are doing is clearing what the court said. I do not think there should be much. Every Member who has spoken to this Bill has chosen to stand on the side of Wanjiku and Atieno. I support and congratulate Hon. Jude Njomo. If he has not yet won one of those presidential orders, I would want to encourage that the House leadership considers him. He has done an excellent job.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): That is quite some campaign of some kind for Hon. Jude Njomo. Anyway, you took limited time so we will have a few more Members to speak to this Amendment Bill. Top on the list is Hon. Bunyasi John.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker. I stand with my friend Jude Njomo. We have had detailed debate. Even though we can share a drink, we have different perspectives on this one. I support the idea that we should lower costs to small borrowers so that they can finance the businesses they want to do. But, as a stance of Parliament in public policy, we should put the Government's feet to the fire. One, on the fiscal policy side, which is the expenditure side, the level of actual effective deficit is much higher than what comes to Parliament.

Why? They overstate the amount of revenue they will raise then they have a big shortfall, so they must raise the money by domestic and external borrowing. People have mentioned the disadvantage of the Government borrowing domestically. In this particular case, instead of raising interest rates since they are capped, all they need to do is to fill the gap that is left by the small borrowers who will not be able to access credit because banks will not lend to them. They do not lend to them because they can make the same money from big borrowers. So, one of the things we must do is to rein in the amount the Treasury is spending by borrowing from these banks. We must confront them directly. We must not celebrate when we get trillions plus budgets and claim that they are the biggest in East Africa. It is the biggest disadvantage. That is one area.

The second area, people have quoted the Federal Reserve Bank and the Bank of England. How many times has the CBK Governor come to Parliament just to brief us on monetary policy? How many times has that been demanded by, say, the finance committee, so that they can hear from him what is going on in terms of discussions around liquidity in the economy? We do not. We only call him in when there is a crisis. He needs to be briefing this House no less than quarterly, perhaps even monthly, depending on what the movements are so that the House is abreast of the movements that are going to be made. If the banks were sitting on too much money that the Government is not taking, interest rates would come way down.

Three, we are quoting countries that have interest rates of 2 per cent and less. One time, Japan had near zero interest rate, effectively much less than 1 per cent a year. There are many things these countries do that drive the interest rates down. However, here we expect that our SMEs will grow by borrowing from the commercial banks. There are many instruments that we have now abandoned, and we have discussed them in this House and in committees. These instruments include special funds that the Government can put aside, even through banks, to lend at agreed interest rates, away from the monies that the commercial banks raise through mobilisation of deposits. India has had that very successfully. We cannot put all of our many policy requirements on interest rates. It will not work.

Four, an interest rate is part of the price of money. But what banks do, if you pressurise the interest rates, and somebody has said that here, the non-interest revenues arise, the origination fee, the application fee and so on. What I think we should have done – and I have discussed this with my friend Hon. Jude Njomo earlier, not today – is to have completed the process of disclosure. Banks had been moved to disclose the levels of interests they charge but it had not included all the elements of the charges. If they are raising money, origination fee,

Disclaimer*:* *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

application fee and whatever fee it is, this can be put into the equivalent of an interest rate so that when you borrow it says the loan you are taking at 5 per cent interest is effectively an annual rate of 18 per cent. Why? It is because there are all these other charges, so that we will be regulating the effective interest rate rather than the nominal interest rate that is quoted casually when we are borrowing. Banks know they will get around it. So, we need to look at that very carefully.

Five, this restriction has made life a lot easier for large borrowers: enterprises and perhaps individuals. We have left money in the banks to be taken by the large borrowers. If the large borrowers are now borrowing at the rate of 13 per cent, the volume that they take is going to compensate for what the small borrowers were taking. I support the intention that Hon. Jude Njomo is so passionately pursuing. Despite the fact that I have a different view point on interest rates, I am in complete agreement with him to pursue this point to its logical conclusion. We must support Hon. Jude Njomo. We must support this House by broadening what it takes to lower interest rates. We should start with the fiscal policy side and get the Treasury to tell us the truth about the amount of revenue they will raise so that they do not come in indirectly and take money through borrowing. Or, as somebody has mentioned here, the Treasury must call Government entities and ask them to cut their expenditures. Cutting expenditure may be good. It should be done when the Budget comes here so that we can look at what the Budget would do to growth and jobs.

Therefore, we do not know what the net impact would be if we asked for return of funds from the Ministries of Water, Roads or Education. We need a front-door squeeze of the expenditure level. We need to see where we are putting money and where we are taking it from so that the deficit can be seen in advance. That will help reduce the pressure that is making banks claim that they cannot make ends meet. So, the time is limited, but we are far from achieving the objective we want except a nominal reduction of interest rates.

However, with regard to lowering the cost for Wanjiku or growing the economy for Atieno, we are not there yet. We should look at all the instruments and for heaven's sake let us make the CBK Governor a regular visitor to this institution. Let us make the National Treasury Secretary a regular visitor to this institution. That way, they will talk the truth. They will be open and transparent for us to access effectively the impact of the economy. What we are doing is not going to get us there.

With those few remarks, I am pained to say that I cannot support this amendment because it is not as comprehensive as it should be to address the problem.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Members. Why is there such an excitement around Hon. Wamuchomba? That consultation must be done at a lower tone so that we hear what the Members have to say.

Hon. Kwenya Thuku.

Hon. Zachary Thuku (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker for affording me this time which I have waited for so long.

I wish to, first of all, thank and congratulate the Hon. Member for Kiambu for being consistent in matters interest capping. He has followed up this matter and he now seeks to bring amendments following a court ruling in which Section 33B was declared unconstitutional. This is testimony that our work, indeed, is to legislate in case there are issues of ambiguity in law. My debate on this matter is two-pronged.

The issue of controlling interest rate is very important for a growing economy like Kenya whereby we do not have a perfect market in which forces of demand and supply dictate prices

Disclaimer*: The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

and interest rates. That being the case, this Bill is timely in making sure that there are no ambiguities. This is also a plus because then our people are going to be shielded against unscrupulous banking practices where we have banks that operate as cartels.

They have some informal agreements on the level of interest rate that is charged to the citizens or loan borrowers. The other thing I would like to address is that of savings. Once we cap interest rates, depositors do not get some good returns from their deposits or the investments and so to some extent there is negativity in interest rate capping. However, the benefits outweigh the negativities and so I wish to support this Bill.

The issues that were not addressed by the Act that we are amending are now going to be addressed. It is not only financial and banking institutions that lend money to borrowers. We have cases of individual lenders and shylocks. Now the law is quite clear that in case anybody contravenes this Act, they will be liable to a certain fine and/or imprisonment.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Kwenya, I am afraid it is 1.00 p.m. In that case we shall cut short your presentation. The good news is that there is still time for us to debate this particular Bill. We are not concluding today and that is why we have not called the Mover to reply.

Hon. Members who still have interest to speak to this Bill will have an opportunity to do that in a subsequent time. Hon. Kwenya, when this matter comes back to the Order Paper you will have your six minutes.

Hon. Zachary Thuku (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker. I oblige.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, the time being 1.00 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*